

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Vanessa Rosen(S10)	Team: Team # 7	CCRB Case #: 200600344	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 01/06/2006 4:00 PM	Location of Incident: Outside of § 87(2)(b) at § 87(2)(b)		Precinct: 67	18 Mo. SOL 7/6/2007	EO SOL 7/6/2007
Date/Time CV Reported Mon, 01/09/2006 9:28 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 01/09/2006 9:28 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Erik Worobey	10614	932229	067 PCT
2. POM Mark Vazquez	29928	933447	067 PCT
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Hua Jiang	13538	935067	067 PCT
2. POM Daniel Insogna	28713	925500	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Erik Worobey	Abuse: PO Erik Worobey entered the private kitchen area of § 87(2)(b) at § 87(2)(b)	
B.POM Mark Vazquez	Abuse: PO Mark Vazquez entered the private kitchen area of § 87(2)(b) at § 87(2)(b)	
C.POM Erik Worobey	Abuse: PO Erik Worobey questioned § 87(2)(b)	
D.POM Erik Worobey	Discourtesy: PO Erik Worobey spoke obscenely and rudely to § 87(2)(b) and § 87(2)(b)	
E.POM Erik Worobey	Force: PO Erik Worobey used physical force against § 87(2)(b)	
F.POM Mark Vazquez	Force: PO Mark Vazquez used physical force against § 87(2)(b)	
G. An officer	Force: An officer used physical force against § 87(2)(b)	

Synopsis

§ 87(2)(b) alleges that on January 6, 2006, at approximately 4pm, he was inside of § 87(2)(b) located at § 87(2)(b) in Brooklyn, drinking a Red Stripe beer in a paper bag. He alleged that officers Erik Worobey and Mark Vazquez observed him drinking the beer and he fled to the basement of the bakery. Officers Worobey and Vazquez entered the private kitchen area of the bakery (allegations A and B) to apprehend him. Witnesses allege that after the officers entered the kitchen, PO Worobey asked the cashier for her "fucking" ID (allegations C and D). § 87(2)(b) also alleged that officers used force to remove him from the bakery and that once he was outside on the street, PO Worobey, threw him against a wall, put his arm around his neck, and punched him, and that PO Vazquez kicked him (allegations E and F). Witnesses also alleged that an officer pushed § 87(2)(b) § 87(2)(b) (allegation G).

§ 87(2)(g)



Summary of Complaint

§ 87(2)(b) § 87(2)(b) § 87(2)(b) ***filed this complaint on behalf of her husband on January 9, 2006*** § 87(2)(b) § 87(2)(b) left a message on the CCRB's call processing system alleging that officers entered § 87(2)(b) at § 87(2)(b) grabbed § 87(2)(b) shoved him, and then pulled him out of the bakery. Once outside, the officers pushed § 87(2)(b)'s head against the wall, kicked him, and threw him on the ground. He was arrested and taken to the 67th Precinct stationhouse. There were six officers who participated and § 87(2)(b) § 87(2)(b) believes that they were new recruits. Five of the officers were white; one was possibly Chinese. § 87(2)(b) § 87(2)(b) did not know what § 87(2)(b) was arrested for, but she believes that a judge threw out all the charges and that the officers made up the charges against her husband. She alleged that § 87(2)(b) had a swollen eye, marks on his neck, bruises where he was kicked, and marks on his arms and legs. He was taken to § 87(2)(b) (Encl. 7A-B)

§ 87(2)(b)'s Initial Phone Statement (encl. 25-A)

On January 12, 2006, Inv. Rosen spoke with § 87(2)(b) who provided the following phone statement: On Friday, January 6th, § 87(2)(b) had finished working as a chef at § 87(2)(b) and went into the front area. He was drinking a beer in a paper bag, watching TV, with his back to the glass door. He saw three cops come inside, and § 87(2)(b) then went to the kitchen and threw away the beer. When he went back to the front of the restaurant, three police officers (two § 87(2)(b) one Hispanic, all short) jumped § 87(2)(b) and pulled him outside, asked him for ID, grabbed his wallet, slammed him against a wall about six times, and punched his eye. Two officers then kicked him on his side. When § 87(2)(b) asked what was happening, one of the officers repeatedly told him to "shut the fuck up." There were a lot of people around, also questioning what the officers were doing. The officers then kicked § 87(2)(b)'s foot and "pitched"

him on the ground and handcuffed him. § 87(2)(b) went to § 87(2)(b) where he was given three Tylenol. § 87(2)(a) 160.50

Medical Records (encl. 22A-P)

The medical records from § 87(2)(b) indicate that on § 87(2)(b), § 87(2)(b) was present at the emergency room and claimed that he had been hit on his head by a police officer during his arrest. There is a small hematoma over his left eye.

§ 87(2)(b) was interviewed at the CCRB on January 18, 2006 (encl. 9A-E)

On January 6, 2006, at approximately 4pm, in the vicinity of § 87(2)(b) in Brooklyn, § 87(2)(b) was in the restaurant § 87(2)(b), in the back making some chicken. He turned the stove off and went outside the kitchen door to the serving area to watch TV. § 87(2)(b) was thirsty, so he took a beer (a Red Stripe in a bottle) out of the refrigerator, and put it in a paper bag. He put it in a paper bag because he does not like to drink beer out in the open. There are no rules in the restaurant against drinking alcohol in there. This was the first beer that he had had.

The restaurant has glass doors and windows with blinds. The blinds were down, but they were open, so one can see in. The restaurant was open, but there was only one person in the restaurant: § 87(2)(b) § 87(2)(b).

§ 87(2)(b) then looked around and saw three officers coming through the door of the restaurant. They didn't say anything when they entered. When he saw the officers, § 87(2)(b) walked toward the kitchen. The officers followed him and picked up their pace, so § 87(2)(b) picked up his pace too. At this time, § 87(2)(b) had almost finished his beer. § 87(2)(b) dumped the beer in the garbage and then went to the back of the restaurant. § 87(2)(b) walked away, because he thought the officers would say something to him about drinking a beer. He went down to the basement because "he felt like it." When § 87(2)(b) returned, about 10 to 12 minutes later, one of the officers said, "there he is."

The officers jumped § 87(2)(b) and took him outside. First, all three officers slammed § 87(2)(b) twice against the door of the restaurant and pulled him outside. § 87(2)(b) could not articulate any details on how they pushed him outside, but he affirmed that all three of them were on him. § 87(2)(b) could not remember what they said when they pushed him outside. § 87(2)(b) moved with the officers when they tried to get him out of the store. He denied resisting.

§ 87(2)(b) noted that the "arresting" officer also asked him for ID, when they were pulling him out of the restaurant. § 87(2)(b) grabbed his wallet from his back left pocket and took out his ID. The "arresting" officer then grabbed § 87(2)(b)'s ID and threw it down to the ground.

The officer who § 87(2)(b) referred to as the "arresting officer" (because he filled out the paperwork against § 87(2)(b) and his shield number was on the property voucher) slammed him against a door to an apartment building (that is adjacent to the bakery), about five to six times. The arresting officer grabbed § 87(2)(b)'s chef's coat and pushed his whole body against the wall. § 87(2)(b)'s back and head hit the wall.

§ 87(2)(b)'s back was against the wall and the arresting officer was facing § 87(2)(b). The officer put his hand around § 87(2)(b)'s neck, however, § 87(2)(b) later specified that it was actually the officer's arm that was around his neck and the officer remained holding § 87(2)(b)'s neck in this position for about a minute and a half. § 87(2)(b) could breathe, but he felt as if the officer was trying to choke him. This officer also punched § 87(2)(b) above his left eye and searched § 87(2)(b)'s pocket when § 87(2)(b) was against the wall. Specifically, the officer put his hand inside § 87(2)(b)'s back and front pants' pockets.

When the arresting officer was slamming § 87(2)(b) against the wall, § 87(2)(b) did not do anything in response. At one point, § 87(2)(b) heard one of the officers say "put him for resisting arrest too." § 87(2)(b) denied that he resisted. When the arresting officer had his arm around § 87(2)(b)

§ 87(2)(b)'s neck, § 87(2)(b) did not try to break free. All he tried to do was keep the pressure off of him by tensing up.

§ 87(2)(b) asked the officers why they were doing this, and if it was just a result of the beer he was drinking. The "arresting" officer told § 87(2)(b) to "shut the fuck up."

The arresting officer then kicked § 87(2)(b)'s leg in such a way that he lost his balance and fell to the ground. § 87(2)(b) fell onto his side, but he could not remember which side. The other two officers then kicked § 87(2)(b) on his side. One of them stepped on his back. § 87(2)(b) showed a bruise to the investigator on the right side of his body, at about the same level as his stomach. When they put on the last handcuff, one of the officers kicked § 87(2)(b). He doesn't know who stepped on his back. He thinks he was kicked about four times. The officers did not say anything when they were kicking him. He thinks that while this was happening, the arresting officer put on the handcuffs. Once § 87(2)(b) was handcuffed, no additional force was used against him.

At Central Booking, § 87(2)(b) told a woman, who had been asking him some questions, that he hadn't taken his medication and he was feeling dizzy. An ambulance transported him to § 87(2)(b). § 87(2)(b) was given three Tylenol and a piece of paper that said he had a tension headache. The judge at Central Booking told § 87(2)(b) that there were no charges against him.

§ 87(2)(b) suffered from the following injuries: bruises on the side of his body and a bruise over his left eye.

Results of Investigation

WITNESS STATEMENTS

§ 87(2)(b) provided the names of several witnesses who work in § 87(2)(b) and in nearby stores. The CCRB spoke with § 87(2)(b) who works in a nearby store. She said that she did not witness anything until § 87(2)(b) was already in handcuffs and that she saw a short § 87(2)(b) and a Hispanic officer knocked § 87(2)(b)'s head against a shutter. She could not specify what exactly these officers were doing. From what she could see, § 87(2)(b) was cooperating. He did not say anything to the officers--he just looked stunned that this was happening. § 87(2)(b) did not see any badge numbers or get a good look at the officers, but she stated that there were three officers all together: One Puerto Rican and two short § 87(2)(b) officers.

§ 87(2)(b) *who works at § 87(2)(b) was interviewed on February 3, 2006 (encl. 10A-D)*

On January 6, 2006, at approximately 4pm, § 87(2)(b) was working at his station in the kitchen of § 87(2)(b). § 87(2)(b) was working in the kitchen area with him. § 87(2)(b) saw § 87(2)(b) come through the door from the front area to the kitchen. § 87(2)(b) could not hear anything that was going on in the front of the store. § 87(2)(b) then proceeded downstairs to the basement of the bakery. § 87(2)(b) did not say anything when he entered the kitchen. He was not running. § 87(2)(b) did not see if § 87(2)(b) had anything in his hands. § 87(2)(b) did not find it unusual that § 87(2)(b) went downstairs, because he believed that § 87(2)(b) had finished his shift for the day, and the downstairs is where employees keep their clothes and their belongings.

About forty seconds later, two police officers came through the same door, looking for § 87(2)(b) saying "where did he go?" One officer remained on the other side of the door--this officer told the officers in the kitchen that they were not allowed to go into this area. They proceeded to go as far as the top of the basement stairs to see where § 87(2)(b) went.

The officers then retreated to the doorway between the kitchen and the front area and the taller officer asked the cashier for her "fucking" ID and said something like "don't you know I could close down this fucking place." The cashier [identified through the investigation to be § 87(2)(b)] was nervous and hesitated and as a result could not produce her ID. She didn't say

anything. The officer repeated the question and § 87(2)(b) a colleague of § 87(2)(b) then provided his ID.

At this time, § 87(2)(b) came back upstairs. The taller officer then held § 87(2)(b) by his throat and pulled him out of the doorway of the kitchen--when he did this, § 87(2)(b) was standing about three feet inside the kitchen from the doorway. It looked as if § 87(2)(b) was grasping for air, because the officer was holding him so tight. § 87(2)(b) could not understand what the officers were saying. The shortest officer then also pulled § 87(2)(b). All three officers then knocked § 87(2)(b)'s head against the glass door § 87(2)(b) later clarified that it was the glass in front of the bakery, next to the door]. One of the officers had grabbed § 87(2)(b) by his right arm. § 87(2)(b) did not see exactly how § 87(2)(b)'s head hit the glass, because there was a lot of struggling and action there. § 87(2)(b) did, however, see that it was the front of his head that hit the glass. He thinks that his shoulder also hit the glass.

The officers pulled § 87(2)(b) outside. While they tried to handcuff him, § 87(2)(b) fell on the pavement. § 87(2)(b) did not see how § 87(2)(b) landed on the ground. As the officers handcuffed § 87(2)(b) the shortest officer (the one who never went into the kitchen) kicked him in the side. When he kicked him, § 87(2)(b) was lying on the pavement, and the other officers were still putting handcuffs on him. It appeared to § 87(2)(b) that § 87(2)(b) was struggling when the officers put the handcuffs on him. Struggling, meaning that maybe § 87(2)(b) was gasping for air due to a shortness of breath. § 87(2)(b)'s hands were definitely behind his back and the officers had a restraint on him. § 87(2)(b) was not struggling or fighting with the officers.

§ 87(2)(b) did not hear § 87(2)(b) say a word during this incident. Although, § 87(2)(b) later stated that he heard § 87(2)(b) tell the officers to be careful because he is diabetic.

Note: On a subsequent visit to § 87(2)(b) § 87(2)(b) told the CCRB investigator that he saw the name Vazquez on one of the badges of the officers who came back into the kitchen.

§ 87(2)(b) **who works at § 87(2)(b) was interviewed on February 3, 2006 (encl. 11A-F)**

§ 87(2)(b), § 87(2)(g) He also alleged that one of the tall officers asked § 87(2)(b) for her ID. § 87(2)(b), § 87(2)(g), § 87(2)(b) also stated that one of the officers grabbed § 87(2)(b)'s throat and banged his head against the front window and that § 87(2)(b) did not fight back.

The officers then took § 87(2)(b) outside. § 87(2)(b) went outside and saw the officers talking with § 87(2)(b). They pulled and threw him onto the ground and then placed him in handcuffs. § 87(2)(b) was gasping for air. § 87(2)(b) does not know how § 87(2)(b) got down to the ground. § 87(2)(b) saw an officer kick § 87(2)(b) while § 87(2)(b) was still standing up. § 87(2)(b) could not remember who kicked him.

NOTE: Both § 87(2)(b) and § 87(2)(b) alleged that an officer, who they could not positively identify, shoved § 87(2)(b) § 87(2)(b), at the end of the incident, when the officers were arresting § 87(2)(b) outside the bakery. The investigator twice went to § 87(2)(b) to get a statement from § 87(2)(b). Both times, § 87(2)(b) refused to provide a statement and said he did not want to get involved with this investigation.

§ 87(2)(b) **was interviewed on February 28, 2006 (Encl. 12A-E)**

Prior to being interviewed on February 28, 2006, § 87(2)(b) provided the following phone statement on January 25, 2006:

§ 87(2)(b) denied seeing § 87(2)(b) drinking anything. She said three police officers entered the store and § 87(2)(b) went toward the back. The officers then started cursing at every one in the store and asking for ID. § 87(2)(b) believes they asked her for ID because somebody was

drinking in the store. One of the officers said, "Give me your fucking ID." She saw the officers kick § 87(2)(b) on the ground, outside the store. They told § 87(2)(b) that he had to come out because he was drinking in the store.

On February 28, § 87(2)(b) provided the following statement: § 87(2)(b) § 87(2)(b) at the bakery at § 87(2)(b) in Brooklyn. § 87(2)(b) was standing near the counter with something in his hand, but she did not see what it was, but she thinks it was in a paper bag. Two police officers, both § 87(2)(b) one with dark hair § 87(2)(b) could not remember anything else about their physical description) then entered the store. § 87(2)(b) went to the back of the store and the officers followed him there. She did not see § 87(2)(b) outside the store.

The officers then approached § 87(2)(b) and started cursing, saying, "Give me your fucking ID, you can't have somebody drinking in your store. We could close down this fucking place."

§ 87(2)(b) then came upstairs and said, "I'm here" and the officers pushed him outside. When asked specifically how they pushed him outside, § 87(2)(b) could not remember. She did not think that either officer touched him in the neck area. They did push him against the glass window of the store and his head hit the window. She could not recall how many times his head hit the window. She also stated that the officers "kicked him outside." She saw them kick him on his side in an attempt to get him outside. She believes there were only two officers dealing with him.

§ 87(2)(b) did not offer any resistance. He did not curse or fight with the officers. He did, however, ask the officers why they were doing this to him. § 87(2)(b) did not go outside, so she did not see what happened out there.

OFFICER IDENTIFICATION

§ 87(2)(g) PO Erik Worobey is listed as the arresting officer and he admitted to being the main officer in charge of the situation. § 87(2)(g) PO Worobey identified PO Mark Vazquez as the officer who assisted him; § 87(2)(b) noted that one of the officers who came into the kitchen area was named Vazquez. PO Vazquez also admitted to being on the scene. Finally, PO Vazquez identified the third officer to be PO Daniel Insogna and PO Insogna acknowledged that he was involved with this incident.

OFFICER STATEMENTS

PO Erik Worobey was interviewed on February 16, 2006 (encl. 14A-D)

PO Worobey had the following entry in his memo book regarding this incident:

15:40: 1 under § 87(2)(b) § 87(2)(b) Male Black § 87(2)(b) (encl. 13A-F)

At 3:40pm on January 6, 2006, PO Worobey was walking by himself down § 87(2)(b) going to his impact post. He was coming from the stationhouse. He observed § 87(2)(b) holding an open container of alcohol (a bottle of Red Stripe that was not in a paper bag) in front of § 87(2)(b) § 87(2)(b) was by himself. PO Worobey crossed the street and asked § 87(2)(b) for ID, saying, "Stop, I need to see your ID." § 87(2)(b) refused and ran into the bakery with the beer in his hand. He ran through a swinging door that lead to the kitchen area and then into the basement. He locked the basement door.

There were other officers walking by and PO Vazquez came to assist PO Worobey. PO Worobey pursued § 87(2)(b) He knocked on the basement door. It was locked. PO Worobey was asked what authority he had as a police officer to go back into the kitchen area. PO Worobey explained that it was a violation committed in his presence. Based on his training, PO Worobey believes that he has the authority to go into an area that is not open to the public to pursue someone who committed a violation if he is in hot pursuit of a suspect.

After § 87(2)(b) went down to the basement, PO Worobey turned to the people who were working in the bakery and asked for the key. No one responded. PO Worobey repeated himself and said that he needed to get in the door. The people in the store continued about their business. PO Worobey then initiated a business inspection on this location, since there was a gentleman in the store with an open container of alcohol, which is a violation. When asked to explain what a business inspection is, PO Worobey stated that section 65B in the alcohol and beverage control states that you need a license for on premises consumption of alcohol and § 87(2)(b) was consuming alcohol in their premises. PO Worobey was doing an inspection to determine if alcohol could be consumed in that location.

PO Worobey asked for identification of whoever was in charge. There was no response. He asked for ID to see who was in charge of the establishment because that would be the person to whom he would issue summonses. PO Worobey never wrote that summons because he never got an ID. PO Worobey never said anything to the effect of "I can close this fucking place down."

While this was happening, PO Vazquez stood in front of the bakery to get the address, so that if anyone attacked PO Worobey they would know where to send the ambulance.

§ 87(2)(b) then came out from the basement. PO Worobey told him to stop and that he needed to see his ID. § 87(2)(b) began to run back to the basement. PO Worobey caught up with him and put his arms around him in a bear hug. PO Worobey was facing § 87(2)(b)'s back at this time. They exited the store together. PO Worobey did not lift him off the floor. PO Worobey took him out of the store by backing up. PO Worobey could not recall if § 87(2)(b) was resisting, but he was limp. PO Worobey took him outside the store to issue § 87(2)(b) the summons because he did not want him to run back down to the basement. PO Worobey also thought he would have a better tactical position if he took § 87(2)(b) outside and placed him against a wall. § 87(2)(b) did not hit the window of the store as they exited the store.

Once they were in front of the store, PO Worobey asked § 87(2)(b) for his ID. At this time, § 87(2)(b) was by a gate by a door right outside the bakery, facing PO Worobey. § 87(2)(b) refused. PO Worobey told § 87(2)(b) that he would have to place him under arrest. PO Worobey took out his handcuffs and § 87(2)(b) held his hands tightly against his body. PO Worobey was able to put one handcuff on his left arm. § 87(2)(b) was holding his arms in front/against his body to prevent PO Worobey from handcuffing him. § 87(2)(b) was also swinging his body from side to side. It took PO Worobey a little time to get both of his hands behind his back. He was placed under arrest and was charged with resisting arrest and possession of an open container of alcohol in public. When asked why the arrest report shows that PO Worobey checked off the box that used force, he explained that he checked it off because he had to use force to carry § 87(2)(b) out and bring him to the ground.

When PO Worobey was placing handcuffs on § 87(2)(b) he continually told him to stop resisting and to put his hands behind his back. PO Worobey never told § 87(2)(b) to "Shut the fuck up." PO Worobey did not hear any other officer on the scene tell him to "Shut the fuck up."

During the "struggle," when PO Worobey was trying to handcuff § 87(2)(b) they both ended up on the ground. PO Worobey put the other cuff on § 87(2)(b) when they were on the ground. PO Worobey never saw any officers kick § 87(2)(b) when he was on the ground. PO Worobey did not kick § 87(2)(b). PO Worobey was asked if he ever slammed § 87(2)(b) against the wall and he replied, "I'm sure that during the struggle we both hit the wall." PO Worobey never held onto § 87(2)(b)'s neck.

PO Vazquez did not help PO Worobey handcuff § 87(2)(b). A large crowd had gathered and PO Vazquez was directing his efforts at controlling the crowd. PO Vazquez did not have any physical contact at all with § 87(2)(b). PO Worobey does not recall if people in the crowd were saying anything. He did not hear PO Vazquez say anything to anyone in the crowd. PO Worobey never told anyone in the crowd to "get the fuck out of here."

At the stationhouse, § 87(2)(b) told PO Worobey that he was suffering from some medical conditions and an ambulance was called for him.

PO Worobey was told that § 87(2)(b)'s medical records show that he has a contusion above his left eye. He was asked if he saw how this could have happened. He said he did not. PO Worobey did not punch § 87(2)(b). He was asked if he had any contact with § 87(2)(b)'s forehead and he noted that they did go down to the ground and that § 87(2)(b) was lying face down on the ground. PO Worobey was on top of him.

PO Mark Vazquez was interviewed on March 13, 2006 (encl. 19A-C)

PO Vazquez does not have any entries in his memo book regarding this incident.

At approximately 4pm, on January 6, 2006, at § 87(2)(b) PO Vazquez was walking to his post with PO Insogna. PO Worobey, who was by himself, was about half a block ahead of them. They were walking on the east side of § 87(2)(b) from § 87(2)(b) toward § 87(2)(b). PO Worobey observed a male drinking an open container of alcohol in front of the bakery. PO Vazquez also observed this man, who was drinking from a brown beer bottle. PO Worobey asked this person for ID and this man ran inside the store. PO Vazquez later noted that he could not hear anything that PO Worobey said to this man, (identified through the investigation to be § 87(2)(b)). PO Worobey pursued § 87(2)(b).

When PO Vazquez and PO Worobey entered the bakery, PO Vazquez observed the male run to the back of the store, open a door, and run downstairs. They decided not to run downstairs because it's a hazard to run down there and one does not know what's down there. PO Worobey was asking where the gentleman had gone and if he worked there. It was confirmed that he did work there. PO Worobey then said that he was going to conduct a business inspection because there was alcohol lying around in the kitchen and they do not have a license to sell alcohol. He wanted to conduct a business inspection to make sure that they had all their certificates. PO Worobey asked the owners for ID. No one produced ID. He asked who was in charge of this establishment and no one answered. PO Worobey did not say anything along the lines of "where's your fucking ID" or "don't you know that I could close down this fucking place."

Approximately three minutes later, § 87(2)(b) came upstairs and PO Worobey asked him for ID because of the open container violation. § 87(2)(b) refused and PO Worobey placed him in a bear hug and brought him outside. PO Vazquez did not assist. When § 87(2)(b) first saw the officers, he looked as if he was going to turn around and go back downstairs. When PO Worobey brought § 87(2)(b) outside, he wasn't listening or coherent. § 87(2)(b) did not bang into anything as PO Worobey brought him outside. PO Vazquez was holding the door open, so he could not see how § 87(2)(b) was acting. PO Worobey did not place his hands around § 87(2)(b)'s neck. PO Vazquez noted that PO Worobey was using his hands to hold § 87(2)(b) in a bear hug.

When they brought him outside, he was struggling. § 87(2)(b) appeared to be intoxicated. § 87(2)(b) smelled of liquor and he was slurring his speech. PO Worobey again asked § 87(2)(b) for ID. § 87(2)(b) did not have any ID and said that he would not provide any ID. It was at this point when the officers told § 87(2)(b) that they were going to put him under arrest.

§ 87(2)(b) started flailing his arms. PO Worobey was trying to grab § 87(2)(b) by the lapel, trying to turn him around. It was like a tug of war between him and PO Worobey. He could not turn him around, so PO Vazquez went to the rear of § 87(2)(b) grabbed him by the back of the shirt, and kicked him in the back of his right knee--a leg sweep to take him down. This happened in a doorway that is adjacent to the store. PO Vazquez tried to get § 87(2)(b) on the ground, because he was resisting arrest and it's easier to handcuff them when they are on the ground. § 87(2)(b) was not saying anything while this was happening. After he was handcuffed, § 87(2)(b) indicated that he was a sick man. PO Vazquez did not kick § 87(2)(b) anywhere else. Once § 87(2)(b) was on the ground, PO Vazquez did not have any contact with him, because at this time, PO

Worobey "had his arm." PO Vazquez never saw PO Worobey put his hand around § 87(2)(b)'s neck. PO Vazquez did not do this. PO Insogna never did this.

PO Vazquez wasn't sure if § 87(2)(b) hit a wall while this was happening. PO Vazquez was asked about witness statements that § 87(2)(b) was slammed against the wall. PO Vazquez noted that there was a back and forth between PO Worobey and § 87(2)(b) where PO Worobey was trying to turn § 87(2)(b) around and he might have hit the wall. PO Vazquez was looking at the crowd at this point. PO Worobey did not punch § 87(2)(b) above his left eye.

While this was happening, a crowd was forming, and PO Insogna was keeping the crowd back. PO Vazquez does not remember what the people in the crowd were saying. No officer on the scene told § 87(2)(b) to "shut the fuck up!"

PO Daniel Insogna was interviewed on March 20, 2006 (encl. 21A-C)

On January 6, 2006, PO Insogna worked a 15:00 x 23:35. He was assigned to a foot post under Spike Overtime. He was assigned to post 3. He was working with PO Worobey and PO Vazquez. He was in uniform and he was on foot.

PO Insogna did not have any specific entries in his memo book regarding this incident.

At approximately 4pm on January 6, 2006, PO Insogna was walking down § 87(2)(b) to his post with PO Worobey and PO Vazquez. All three of them were walking together. When they were about seven to eight feet away, they observed § 87(2)(b) with an open container of alcohol (he was drinking something out of a brown bottle). They were on the same side of the street as him. PO Insogna thinks it was PO Worobey who spoke with him first and he asked him for his ID.

The officers asked him to stop. § 87(2)(b) looked at the officers but he did not stop. He walked inside the location. He did not run, but he went inside at a fast pace. PO Worobey asked him for ID. He refused. PO Insogna only went a few feet inside the bakery. He marked on a photo how far he went in--where the round countertops end (see photo). PO Insogna first saw § 87(2)(b) by the counter area. All three officers entered pretty much at the same time. Neither PO Insogna nor PO Vazquez said anything. § 87(2)(b) said "no" but he did not say anything else.

The officers escorted him outside. PO Insogna does not remember who grabbed § 87(2)(b) or how he was escorted out of the bakery. § 87(2)(b) was fairly compliant. He walked with the officers. He did not say anything while the officers escorted him out.

While they were taking him out of the bakery, § 87(2)(b) did not hit the door or the window next to the door. He did not fall. He did not see PO Worobey grab § 87(2)(b) by the neck when he escorted him out of the store. PO Worobey did not address anyone else in the store. He did not hear PO Worobey tell § 87(2)(b) to "shut the fuck up."

§ 87(2)(b) refused to provide his ID. The officers explained that they saw him drinking in public and they had to write him a summons. He then started swinging his arms, saying, "No, no, no, I wasn't drinking." A group started to gather around, so PO Worobey and PO Vazquez restrained § 87(2)(b) and put him in handcuffs, while PO Insogna kept the crowd back. About three to five people gathered. PO Insogna did not hear anyone in the crowd say anything in particular. He was just saying, "Back, back, back." He could not understand what people were saying.

PO Insogna could hear § 87(2)(b) yelling and screaming in the background, but he does not know exactly what he was saying. When the officers were trying to restrain § 87(2)(b) PO Insogna could not see much of what was happening because his back was to them. He saw them get § 87(2)(b) on the ground and put him in handcuffs. PO Insogna does not know how § 87(2)(b) got to the ground. He heard them issue an order to get on the ground. He was asked if he ever saw § 87(2)(b) hit the wall and he responded that his back was to them. PO Insogna did not need to assist the officers. He did not have any physical contact at all with § 87(2)(b) PO

Insogna never saw any officer kick § 87(2)(b) once he was on the ground. PO Insogna did not kick him.

Neither PO Vazquez nor PO Worobey ever went to the back of the store. PO Insogna never heard PO Worobey say anything along the lines of "Where's your fucking ID?"

PO Insogna never lost sight of § 87(2)(b) from the time that he saw § 87(2)(b) with the bottle in his hand. The beer was not in a paper bag.

PO Hua Jiang was interviewed on March 10, 2006 (encl. 17A-B)

PO Jiang did not witness this incident. He did, however, transport § 87(2)(b) to Central Booking. On the way to Central Booking, § 87(2)(b) told PO Jiang that he had received an open container [summons] and that he had tried to hide the bottle and he ran inside the store. He did not say anything else. He did not complain that he was hurt. He did not say anything about the officers who arrested him. PO Jiang has not spoken to PO Worobey about this incident. They work different tours.

Documents from the NYPD

The radio run generated in response to this incident shows that foot post 3 called in an arrest at 3:37pm and that a warrant check was requested. PO Daniel Insogna was assigned to post 3. (encl. 23A-C)

The online booking sheet for § 87(2)(b)'s arrest states, § 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b)

Force was used to prevent escape. § 87(2)(b) was charged § 87(2)(a) 160.50. The classification for arrest is listed as "resisting arrest." (encl. 13A-F)

Status of § 87(2)(b)'s Arrest (Encl. 24A-D)

On January 6, 2006, at 3:40pm, § 87(2)(b) was charged § 87(2)(a) 160.50

§ 87(2)(b) in front of § 87(2)(b). PO Erik Worobey is the arresting officer. § 87(2)(b)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)'s CCRB and Criminal Conviction History (encl. 6A, 26-C)

This is § 87(2)(b)'s first CCRB complaint [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)].

PO Erik Worobey's and PO Mark Vazquez' CCRB History (encl. 5A-B)

Neither PO Erik Worobey nor PO Mark Vazquez have ever been disciplined pursuant to a CCRB complaint.

Conclusions and Recommendations

UNDISPUTED FACTS

There is no dispute that § 87(2)(b) was drinking a Red Stripe beer. There is also no dispute that when § 87(2)(b) noticed the officers approach him, he fled to the basement of the bakery, where he works. That PO Worobey and PO Vazquez followed him into the kitchen is also not in dispute.

DISPUTED FACTS

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

ANALYSIS OF CREDIBILITY

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

DETERMINATION OF FACT

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) also saw a "struggle" between § 87(2)(b) and the officers.

§ 87(2)(b), § 87(2)(g)

When § 87(2)(b) went to the hospital, he alleged he was hit in the head by a police officer during his arrest and he did have a hematoma over his eye. § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation A: PO Erik Worobey entered the private kitchen area of § 87(2)(b) **at** § 87(2)(b)

Allegation B: PO Mark Vazquez entered the private kitchen area of § 87(2)(b) **at** § 87(2)(b)

Westlaw's case notes for Penal Law 10-125 (encl. 1A-C), consumption of alcohol on streets prohibited, states:

"As a result of the police officers' 'plain view' observation of contraband (violation of the Open Container Law), followed by the suspect's flight, the officers were entitled to pursue the suspect. *People v. Neely*, 18 A.D.3d 394, 796 N.Y.S.2d 61 (1st Dept. 2005)."

§ 87(2)(g)

Allegation C: PO Erik Worobey questioned § 87(2)(b)

According to *Kamins Search & Seizure*, the Court of Appeals has held in *People vs. DeBour*, 40 NY2d 210, 386 NYS2d 375 (1976) that an officer can approach to request information when there is "some objective credible reason for that interference not necessarily indicative of criminality." (encl. 2)

§ 87(2)(g)

§ 87(2)(b). New York City administrative Code 10-125 (encl. 1A-C) regarding the consumption of alcohol in a public place defines a public place as:

"A place to which the public or a substantial group of persons has access including, but not limited to, any highway, street, road, sidewalk, parking area, shopping area, place of amusement, playground, park or beach located within the city except that the definition of a public place shall not include those premises duly licensed for the sale and consumption of alcoholic beverages on the premises or within their own private property."

§ 87(2)(g)

Allegation D: PO Erik Worobey spoke obscenely and rudely to § 87(2)(b) **and** § 87(2)(b)

§ 87(2)(g)

In Disciplinary Case No. 78163/02 (encl. 3A-D) regarding the use of discourtesy, the Judge wrote:

"Indeed, in questioning whether use of strong language during certain confrontations constitutes misconduct, the court has given latitude to officers who used otherwise impolite words to address suspects in stressful street situations. See *Disciplinary Case Nos. 67797/93, 62280/88, 67906/93.*"

§ 87(2)(g)

Allegation E: PO Erik Worobey used physical force against § 87(2)(b)

Allegation F: PO Mark Vazquez used physical force against § 87(2)(b)

In regards to use of excessive force, the Officer of Administrative Trials and Hearings "has often repeated its unwillingness to closely second guess the split second decisions of officers in difficult circumstances. Therefore, use of force in self-defense, or to effectuate an arrest, must be manifestly or obviously unreasonable in order to constitute misconduct." *Police Department v. Stiso* OATH index 1886/99 (aug. 1999) (hitting resisting suspect with flashlight in face causing cut requiring seven stitches not misconduct). (encl. 4A-F)

§ 87(2)(g)

Allegation G: An officer used physical force against § 87(2)(b)

Two witnesses, § 87(2)(b) and § 87(2)(b) both alleged that an officer pushed § 87(2)(b) when he tried to inquire about the arrest of § 87(2)(b). The undersigned investigator made two trips to § 87(2)(b) to get an official statement from § 87(2)(b) about what happened. § 87(2)(b) refused to provide a statement, stating that he did not want to get involved with this investigation. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: